

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

PAULA JOHNSON,

Plaintiff,

v.

**LELAND CHERRY
and JAMES MISTER,**

Defendants.

No. 02-CV-1231-DRH

ORDER

HERNDON, Chief Judge:

On November 20, 2007, the Seventh Circuit Court of Appeals entered a Judgment vacating this Court's fee award and remanding the case to this Court "with directions to award Clinite fees in the amount of \$3,333 and costs in the amount of \$768.83" (Doc. 121, p. 2). The Court received the Seventh Circuit's Mandate on December 14, 2007. Pursuant to the Seventh Circuit's directive, the Court entered an Order awarding Clinite fees in the amount of \$3,333 and costs in the amount of \$768.83 (Doc. 122). Thereafter on February 28, 2008, the Court denied Johnson's pro se motion for new trial for omission [sic], misapprehension [sic], and fraud F.R.A.C.P 60(b) (Doc. 124). On March 11, 2008, Johnson filed a notice of appeal (Doc. 125) and a motion to proceed in forma pauperis on appeal

(Doc. 126). Based on the following, the Court denies Johnson's motion.

Federal Rule of Appellate Procedure 24(a) provides:

A party ... who desires to appeal in forma pauperis must file a motion in the district court. The party must attach an affidavit that: (A) shows ... the party's inability to pay or give security for fees and costs; (B) claims an entitlement to redress; and (C) states the issues that the party intends to appeal.

FED. R. APP. 24(a). A party may not proceed *in forma pauperis* if the district court certifies that the appeal "is not taken in good faith." **28 U.S.C. § 1915(a)(3); FED.**

R. APP. P. 24(a). An appeal taken in "good faith" is one that seeks review of any issue that is not frivolous, meaning that it involves "legal points arguable on their merits." ***Howard v. King*, 707 F.2d 215, 219-20 (5th Cir.1983) (quoting *Anders v. California*, 386 U.S. 738 [1967]); see also, *Coppedge v. United States*, 369 U.S. 438, 445, 82 S.Ct. 917, 8 L.Ed.2d 21 (1962).** On the other hand, an appeal taken in bad faith is one that is based on a frivolous claim, that is, a claim that no reasonable person could suppose has any merit. ***Lee v. Clinton*, 209 F.3d 1025, 1026 (7th Cir. 2000).**

Here, the Court finds that Johnson's appeal of the Court's February 28, 2008 Order is taken in bad faith as it is based on a frivolous claim. As stated in the February 28, 2008 Order denying Johnson's request for new trial, the Court properly followed the directive of the Seventh Circuit Court of Appeals. No reasonable person could suppose that this appeal has any merit. Accordingly, the Court **DENIES** Johnson's motion to proceed in forma pauperis on appeal (Doc. 126). Pursuant to

FED. R. APP. P. 24, Johnson should refile her motion with the Seventh Circuit Court of Appeals.

IT IS SO ORDERED.

Signed this 12th day of March, 2008.

/s/ David R. Herndon

Chief Judge
United States District Court